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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,701	04/28/2002	Ilan Samson	2613RI-1	7723

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EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/049,701	<b>Applicant(s)</b> SAMSON, ILAN	
	<b>Examiner</b> Robin A. Hylton	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 14-19 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-19 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 14-16, 18, 19, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heinz et al. (US 2,657,836).

Heinz teaches a cup portion **4** and lid **1**, the lid having a spout, a plug **5** inserted within the spout, and a skirt **3** for attachment to the cup. The plug has ridges in a continuous helical pattern formed by the helical grooves **6** and **7**. The spout allows for the cup contents to flow out of the cup through the grooves and out of the spout opening **2**. Heinz does not teach a liquid in the cup and is silent regarding the specific dimensions of the cup as set forth in the claims of the instant application.

It would have been an obvious matter of design choice to make the cup, i.e., the cup portion, the lid including spout and plug, of a size to allow the flow of fluid as set forth in the instant claims since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Heinz teaches the lid and plug are preferably formed of plastic material, but are not limited thereto. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the plug of an elastomeric material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. To form the detachable member of an elastomeric material would allow for a more compressible material to be inserted further into the spout and provide a more engaged fit therebetween.

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It is noted the intended use of the cup of Heinz is for a granular material. The cup can also be used to hold and dispense liquid material. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As set forth herein, the cup of Heinz is capable of performing the function of the intended use of the instant invention.

3. Claims 4-19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buchman et al. (US 5,890,621) in view of Boese (US 3,102,651).

Buchman teaches a cup **22** having a lid **22** with a spout **23** and a detachable member in the form of a multi-part, removable valve structure **25**. Thus, Buchman teaches the claimed cup except for the detachable member being a (single piece) plug having continuous helical ridges.

Boese teaches a flow controlling, detachable member of plastic composition. The plug can be formed of other materials (see column 4, lines 30-31) and is seen in figure 2A to have continuous ridges.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the detachable member of Boese for the detachable member of Bachmann. Doing so provides a one-piece, flow controlling plug easier to clean and use.

It would have been an obvious matter of design choice to make the cup, i.e., the cup portion and the lid including spout and plug, of a size to allow the flow of fluid as set forth in the instant claims since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. Wherein a liquid fluid can be used in the cup of Buchman as modified by Boese, one of

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ordinary skill in the art would modify the dimensions of the resulting cup to allow for a "spill proof" cup as set forth in the instant claims.

***Response to Arguments***

4. Applicant's arguments filed March 10, 2006 have been fully considered but they are not persuasive.

In response to applicant's argument that the cup of Heinz cannot be used as a drinking cup, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

The cup of Heinz is disclosed as being directed for use with a granular substance. The cup of Heinz is capable of being used with a liquid substance such as vinegar or other liquid seasoning. To the degree one would not want the granular substance to flow immediately out of the spout upon turning the cup upside down, one would not want the liquid substance to flow out immediately either. Thus, a small circular motion to start movement of either substance toward the spout opening is not incomprehensible. Such movement for dispensing of the contents is less forceful than shaking the cup and provides for a more controlled flow of the substance along the helical pattern and out of the spout opening.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the

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applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With regard to the combination of Bachman and Boese, applicant has erroneously stated that neither reference teaches a "detachable member" (see page 5, line1). Bachman teaches a detachable member comprising a valve housing and a valve. The simpler design of Boese makes removal of the valve for cleaning a less cumbersome task.

Regarding applicant's argument that the combination of Bachman and Boese teaches away from the claimed invention, it is pointed out that the resulting cup also has a volume of the passage is "large enough to additionally absorb the effect of downward shaking of the cup", i.e., of at least initially downward shaking. It is obvious that the instant lid will not result in "leakage" of the liquid contents upon an initial shaking of the cup. However, it is suggested that repeated downward shaking of the cup will result in liquid being expelled through the spout opening. Similarly, the spout valve of Bachman will result in liquid being expelled through the spout opening upon violent and/or repeated downward shaking of the cup.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

7. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

8. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

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Signature \_\_\_\_\_

Date \_\_\_\_\_

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

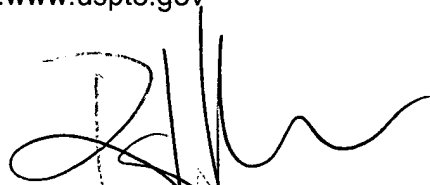
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH  
May 25, 2006



Robin A. Hylton  
Primary Examiner  
GAU 3727